



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

VIRGINIA:

IN THE DEPARTMENT OF ENVIRONMENTAL QUALITY

IN RE: Clarence D. Jones

ORDER

This cause came to be heard on October 10, 2019, in the Department of Environmental Quality's Piedmont Regional Office, in Glen Allen, Virginia.

Pursuant to § 10.1-1186 of the Code of Virginia, the Director of the Department of Environmental Quality ("DEQ") has the authority to issue special orders that may include injunctive relief and civil penalties.

I have reviewed the Record, Exhibits, and the Presiding Officer's Recommended Findings of Fact and Conclusions of Law in the above-referenced matter. Accordingly, I adopt the attached Findings of Fact and Conclusions of Law and incorporate them into this Order.

Pursuant to my authority under Va. Code § 10.1-1186, I order Mr. Clarence D. Jones to comply with (1) the State Water Control Law, Va. Code § 62.1-44.2 et seq., (2) the Virginia Pollutant Discharge Elimination System ("VPDES") Permit Regulations, 9 VAC 25-31-10 et seq., and (3) the VPDES General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity, 9 VAC 25-151-10 et seq.

Specifically, I order Mr. Clarence D. Jones to complete the following with respect to the Doc Jones Auto Parts facility located at 2183 Twiggs Ferry Road in Hartfield, Virginia (the "Facility"):

1. Within 30 days from the date of this Order, submit a complete and accurate application for coverage under the VPDES General Permit for Stormwater Discharges Associated with Industrial Activity effective July 1, 2019.

2. Within 45 days from the date of this Order, submit an application for participation in the e-DMR program to DEQ's Piedmont Regional Office. Submit all subsequent DMRs electronically through DEQ's e-DMR program.
3. Perform Chesapeake Bay TMDL monitoring for total phosphorus and total nitrogen during the July-December 2019 or January-June 2020 monitoring period, and submit DMRs electronically using DEQ's e-DMR system by January 10, 2020 (for the July-December 2019 monitoring period) or July 10, 2020 (for the January-June 2020 monitoring period).
4. Within 90 days from the end of the monitoring period for which TMDL monitoring is submitted pursuant to paragraph 3 above, submit calculations of the Facility's stormwater loads pursuant to 9 VAC 25-151-70 Part I(B)(8) and a Chesapeake Bay TMDL action plan if required by 9 VAC 25-151-70 Part I(B)(8)(f).
5. Pay a civil penalty in the total sum of **Ten Thousand Dollars (\$10,000)** within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The duration of this Order shall be twelve months from the date that it is entered.

Enter this order this 3rd day of February, 2020



David K. Paylor
Director, Department of Environmental Quality

VIRGINIA:

IN THE DEPARTMENT OF ENVIRONMENTAL QUALITY

IN RE: Clarence D. Jones

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Preliminary Statement

This case concerns whether Mr. Clarence D. Jones violated certain provisions of the State Water Control Law, Va. Code § 62.1-44.2 *et seq.*; the Virginia Pollutant Discharge Elimination System (“VPDES”) Permit Regulations, 9 VAC 25-31-10 *et seq.*; the VPDES General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity, 9 VAC 25-151-10 *et seq.*; and the VPDES Permit for Stormwater Discharges Associated with Industrial Activity effective July 1, 2014, Registration Number VAR051123 (the “Permit”).¹ The alleged violations at issue occurred at the Doc Jones Auto Parts facility (the “Facility”) located at 2183 Twiggs Ferry Road in Hartfield, Virginia. Also at issue in this case is whether a civil penalty is warranted for the alleged violations.

On October 10, 2019, DEQ staff held a Special Order Proceeding (the “Proceeding”) in this matter pursuant to Va. Code §§ 2.2-4019 and 10.1-1186 before presiding officer Lee Crowell. The Proceeding took place at the Department of Environmental Quality (“DEQ”) Piedmont Regional Office (“PRO”), in Glen Allen, Virginia. Mr. Jones attended the Proceeding and was represented by counsel.

Attached are a recording of the Proceeding and the exhibits numbered as they were received. The exhibits introduced into the record by DEQ include the DEQ Exhibit Book, containing DEQ Exhibits 1-17, conveyed to Mr. Jones on August 2, 2019, as well as additional exhibits labeled as DEQ Exhibits 18-21, conveyed to Mr. Jones on October 7, 2019. DEQ’s exhibits also include a copy of the August 2, 2019 Notice of Special Order Proceeding, September 5, 2019 rescheduling letter, and October 4, 2019 reminder letter, labeled as DEQ Exhibit 22. Mr. Jones introduced exhibits marked as D #1 and D #2 during the proceeding.

DEQ called two witnesses during the Proceeding: Heather Deihls, PRO Water Compliance and Monitoring Manager, and Kristen Sadtler, Water Enforcement Manager. Mr. Jones also testified during the Proceeding.

The Presiding Officer left the record open until October 17, 2019 to allow Mr. Jones to submit any additional compliance documentation he would like the Agency to consider. However, Mr. Jones did not submit any other information on the record.

¹ Prior to July 1, 2019, the Permit was promulgated at 9 VAC 25-151-70, *et seq.*

II. Findings of Fact

A. Jurisdiction and Venue

1. Mr. Jones owns the Facility at 2183 Twiggs Ferry Road in Hartfield, Virginia. *DEQ Exh. 1.*
2. The Facility is located within the part of the Commonwealth administered by DEQ's PRO. Testimony of Heather Deihls.
3. Coverage under a VPDES permit is required for discharges of stormwater from industrial activities at the Facility associated with dismantling of used motor vehicles for resale and scrapping of those vehicles. Testimony of Heather Deihls.
4. Mr. Jones registered for coverage under the Permit for stormwater discharges from the Facility, and DEQ issued Permit coverage to Mr. Jones on August 20, 2014. Testimony of Heather Deihls; *DEQ Exh. 1 and 2.*
5. The Permit expired on June 30, 2019. Testimony of Heather Deihls; *DEQ Exh. 2.* As of the date of the Proceeding, Mr. Jones had not registered for coverage under the VPDES Permit for Stormwater Discharges Associated with Industrial Activity effective July 1, 2019. Testimony of Heather Deihls.

B. Stormwater Pollution Prevention Plan ("SWPPP")

a. Relevant SWPPP Requirements

6. Part III of the Permit required a SWPPP to be developed and implemented for the Facility to "document the selection, design, and installation of control measures, including BMPs, to eliminate or reduce the pollutants in all stormwater discharges from the facility, and to meet applicable effluent limitations and water quality standards." *DEQ Exh. 2;* Testimony of Heather Deihls.
7. Pursuant to Permit Part III(F)(2), the permittee must retain a copy of the SWPPP at the Facility and make it immediately available to DEQ for review at the time of an on-site inspection or upon request. *DEQ Exh. 2.*

b. Failure to Have a SWPPP for the Facility

8. During an inspection of the Facility by DEQ staff on January 17, 2017, a SWPPP was not available for review. Testimony of Heather Deihls; *DEQ Exh. 5 and 7.*
9. During a meeting with DEQ staff on May 24, 2018, Mr. Jones stated that he previously had a SWPPP prepared by a consultant, but he could not locate it. Testimony of Heather Deihls. Mr. Jones stated that he would look for the SWPPP and provide DEQ with

whatever documentation he could find or prepare a new SWPPP. Testimony of Heather Deihls.

10. Mr. Jones submitted an acceptable SWPPP for the Facility on July 20, 2018, with a certification dated March 20, 2018. *DEQ Exh. 18.*

C. Annual Comprehensive Site Compliance Evaluations and Quarterly Visual Examinations

a. Permit Requirements

11. Part III(E) of the Permit required the permittee to conduct comprehensive site compliance evaluations on an annual basis. *DEQ Exh. 2.*
12. Part III(E)(3) of the Permit required development of a report summarizing the comprehensive site compliance evaluations and required the report to be maintained with the SWPPP. *DEQ Exh. 2.*
13. Part I(A)(1)(a)(1) of the Permit required the permittee to perform and document a quarterly visual examination of a stormwater discharge from each outfall at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December.
14. Part I(A)(1)(a)(3) of the Permit required visual examination reports to be maintained on-site with the SWPPP.

b. Failure to Conduct Annual Comprehensive Site Compliance Evaluations and Quarterly Visual Examinations

15. At the time of the DEQ inspection of the Facility on January 17, 2017, documentation of annual comprehensive site compliance evaluations and quarterly visual examinations from 2014 forward was not available for review. Testimony of Heather Deihls; *DEQ Exh. 5 and 7.*
16. During the meeting with DEQ staff on May 24, 2018, Mr. Jones provided annual comprehensive site compliance evaluations for 2017 and 2018, as well as quarterly visual examinations for the first half of 2018. Testimony of Heather Deihls. Mr. Jones stated that he would look for any other documentation of annual comprehensive site compliance evaluations and quarterly visual examinations and would provide it to DEQ. Testimony of Heather Deihls.
17. On July 20, 2018, Mr. Jones again submitted the annual comprehensive site compliance evaluations for 2017 and 2018, dated December 23, 2017 and April 30, 2018, respectively. Testimony of Heather Deihls; *DEQ Exh. 18.*

18. Mr. Jones's July 20, 2018 submittal also included quarterly visual examinations for the first and second quarter of 2018, dated March 20, 2018 and June 30, 2018, respectively. Testimony of Heather Deihls; *DEQ Exh. 18*.
19. Mr. Jones led DEQ staff to believe that he was submitting all of the relevant compliance documentation he had with his July 20, 2018 submittal. Testimony of Heather Deihls.
20. On September 4, 2019, after DEQ issued the Notice of Special Order Proceeding, Mr. Jones submitted annual comprehensive site compliance evaluations for 2014 through 2018. Testimony of Heather Deihls; *DEQ Exh. 20*. The 2017 and 2018 annual comprehensive site compliance evaluations submitted on September 4, 2019 were dated December 18, 2017 and December 20, 2018, respectively. Testimony of Heather Deihls; *DEQ Exh. 20*. Both the dates and substance of the documents submitted on September 4, 2019 differed from the documents submitted on July 20, 2018 for the 2017 and 2018 annual comprehensive site compliance evaluations. Testimony of Heather Deihls; *DEQ Exh. 18 and 20*.
21. Mr. Jones's September 4, 2019 submittal also included quarterly visual examinations for the second quarter of 2014 through the second quarter of 2019, with the exception of the second quarter of 2017. Testimony of Heather Deihls; *DEQ Exh. 20*. The first and second quarter 2018 visual examinations submitted on September 4, 2019 were dated March 16, 2018 and June 11, 2018, respectively. Testimony of Heather Deihls; *DEQ Exh. 20*. As with the annual comprehensive site compliance evaluations, the dates and substance of the documents submitted on September 4, 2019 differed from the documents submitted on July 20, 2018 for the first and second quarter 2018 visual examinations. Testimony of Heather Deihls; *DEQ Exh. 18 and 20*.
22. Prior to September 4, 2019, Mr. Jones did not provide any indication that he had performed two sets of annual comprehensive site compliance evaluations in 2017 and 2018 or two sets of quarterly visual examinations for the first and second quarter 2018. Testimony of Heather Deihls.
23. The handwriting and pen used appeared uniform throughout the various documents Mr. Jones submitted on September 4, 2019, Testimony of Heather Deihls, suggesting that they could have all been prepared at the same time rather than on the various purported inspection dates.
24. The dates and substance of the documents submitted on September 4, 2019 are fundamentally contradictory to the documents submitted on July 20, 2018 which were purported to represent the same time period, the first and second quarter 2018 visual examinations. As a result, the record supports a finding that Mr. Jones only completed those annual comprehensive site compliance evaluations and quarterly visual examinations for which he provided documentation on May 24, 2018 and July 20, 2018. Furthermore, due to the contradictory submissions of documentation, the annual comprehensive site compliance evaluations and quarterly visual examinations for 2014-

2016 cannot be accepted. Based on the totality of the circumstances regarding the contradictory documentation submitted, I find that Mr. Jones failed to conduct annual comprehensive site compliance evaluations and quarterly visual examinations in 2014-2016

D. Discharge Monitoring Reports (“DMRs”)

a. Discharge Monitoring Requirements

25. Permit Part I(A)(1)(b) required benchmark monitoring of stormwater discharges from the Facility's stormwater outfalls for the presence of pollutants of concern. *DEQ Exh. 2*; Testimony of Heather Deihls.
26. Permit Part I(B)(7)(b)(1) required discharge monitoring for parameters covered by the Chesapeake Bay Total Maximum Daily Load (“TMDL”)--total suspended solids, total nitrogen, and total phosphorus. *DEQ Exh. 2*; Testimony of Heather Deihls.
27. Permit Part I(A)(2)(d)(2) required benchmark and Chesapeake Bay TMDL discharge monitoring to be conducted semiannually for the January through June monitoring period and the July through December monitoring period. *DEQ Exh. 2*; Testimony of Heather Deihls.
28. Permit Part I(A)(5)(a) required benchmark and Chesapeake Bay TMDL discharge monitoring results to be submitted semiannually to DEQ on DMRs by January 10 (for the July 1 through December 31 monitoring period) and July 10 (for the January 1 through June 30 monitoring period). *DEQ Exh. 2*; Testimony of Heather Deihls.
29. 9 VAC 25-31-970 and 9 VAC 25-31-1020 require facilities with coverage under the Permit to either participate in the electronic DMR (“e-DMR”) program by July 26, 2018 or obtain a waiver from DEQ prior to that date.
30. 9 VAC 25-31-1020(A) requires electronic submission of DMRs for General VPDES Industrial Stormwater Permits starting July 26, 2018, with the exception of those covered by waivers under 9 VAC 25-31-1010.

b. Failure to Submit DMRs

31. As noted in a Warning Letter (“WL”) issued September 22, 2015 and a Notice of Violation (“NOV”) issued March 28, 2018, DEQ did not receive the benchmark monitoring or Chesapeake Bay TMDL DMRs for Outfalls 001 or 002 for the January-June 2015 monitoring period, which were due July 10, 2015. *DEQ Exh. 3 and 7*; Testimony of Heather Deihls.
32. To date, Mr. Jones has failed to submit the benchmark monitoring or Chesapeake Bay TMDL DMRs for Outfalls 001 or 002 for the January-June 2015 monitoring period. Testimony of Heather Deihls.

33. As noted in a WL issued August 23, 2016 and the NOV issued March 28, 2018, DEQ did not receive the Chesapeake Bay TMDL DMRs for Outfalls 001 for the January-June 2016 monitoring period, which was due July 10, 2016. *DEQ Exh. 3 and 7*; Testimony of Heather Deihls.
34. To date, Mr. Jones has failed to submit the Chesapeake Bay TMDL DMRs for Outfalls 001 for the January-June 2016 monitoring period. Testimony of Heather Deihls.
35. As noted in the March 28, 2018 NOV, DEQ did not receive a benchmark monitoring DMR for Outfall 001 for the July-December 2017 monitoring period, due January 10, 2018. *DEQ Exh. 7*; Testimony of Heather Deihls.
36. To date, Mr. Jones has failed to submit the benchmark monitoring DMR for Outfall 001 for the July-December 2017 monitoring period. Testimony of Heather Deihls.
37. DEQ has not received benchmark monitoring or Chesapeake Bay TMDL DMRs for Outfall 001 for the January-June 2019 monitoring period. Testimony of Kristen Sadtler.

c. E-DMR Program

38. DEQ notified Mr. Jones of the e-DMR requirement by letters dated March 26, 2018 and June 29, 2018. *DEQ Exh. 6 and 9*; Testimony of Heather Deihls.
39. To date, Mr. Jones has not submitted an application for participation in e-DMR. Testimony of Heather Deihls.
40. On July 20, 2018, Mr. Jones submitted petitions for a permanent waiver and temporary waiver from e-DMR. *DEQ Exh. 10*. The basis given by Mr. Jones for the permanent and temporary waiver requests was that Mr. Jones has no computer skills, is 76 years old, and operates his business with no employees and with limited operating hours. *DEQ Exh. 10*; Testimony of Heather Deihls.
41. At the time the July 20, 2018 waiver petitions were submitted, the basis provided by Mr. Jones did not satisfy DEQ's criteria for granting a temporary or permanent e-DMR waiver. Testimony of Heather Deihls. In 2018, DEQ's criteria for granting a permanent or temporary waiver was limited to a religious objection to use of computers or electricity. Testimony of Heather Deihls. Because Mr. Jones did not raise a religious objection, he did not satisfy the 2018 criteria for an e-DMR waiver. Testimony of Heather Deihls.
42. In 2019, DEQ changed its policy to also allow temporary or permanent e-DMR waivers when electronic reporting is a burden to the permittee, and the permittee has a good compliance history. Testimony of Heather Deihls. However, Mr. Jones would not be eligible for a waiver under DEQ's 2019 criteria because he does not have a good compliance history at the Facility. Testimony of Heather Deihls.

43. On August 14, 2018, DEQ notified Mr. Jones that the agency rejected his July 20, 2018 request for a permanent waiver from e-DMR. *DEQ Exh. 19*; Testimony of Heather Deihls.
44. Although DEQ did not explicitly notify Mr. Jones that his July 20, 2018 request for a temporary waiver was rejected, DEQ did not grant Mr. Jones a temporary waiver from e-DMR, and the basis provided by Mr. Jones in his temporary waiver application did not satisfy DEQ's criteria for a temporary waiver.² Testimony of Heather Deihls.
45. On December 6, 2018, DEQ received a second petition for a permanent e-DMR waiver from Mr. Jones, reiterating the same basis set forth in the July 20, 2018 petition. *DEQ Exh. 12*; Testimony of Heather Deihls.
46. The December 6, 2018 petition did not satisfy DEQ's criteria for granting a permanent waiver at the time of the petition because Mr. Jones did not raise a religious objection. Testimony of Heather Deihls. The basis provided also would not satisfy DEQ's current waiver criteria because Mr. Jones does not have a good compliance history at the Facility. Testimony of Heather Deihls.
47. On December 17, 2018, DEQ responded to Mr. Jones's second petition for permanent waiver, reiterating that DEQ had rejected Mr. Jones's first petition, noting that Mr. Jones had failed to appeal that denial, and requesting that Mr. Jones complete the e-DRM registration application. *DEQ Exh. 13*; Testimony of Heather Deihls. Although, DEQ's December 17, 2018 letter did not explicitly state that Mr. Jones's second petition for permanent waiver was denied, it was clear from the letter that DEQ was not granting an e-DRM waiver.³ *DEQ Exh. 13*.
48. Mr. Jones failed to submit an e-DMR application as requested by DEQ's December 17, 2018 letter. Testimony of Heather Deihls.
49. As noted in an NOV issued February 14, 2019, DEQ did not receive benchmark monitoring or Chesapeake Bay TMDL DMRs for Outfall 001 for the July-December 2018 monitoring period via the required electronic DMR ("e-DMR") forms. DEQ does not accept DMRs that are not submitted electronically. *DEQ Exh. 14*; Testimony of Heather Deihls.

² 9 VAC 25-31-1010(E) requires DEQ to either approve or reject temporary or permanent waiver requests within 120 days and provide the requestor with notice of the approval or rejection of their temporary or permanent waiver request. It does not appear that DEQ completed these requirements with respect to Mr. Jones's temporary waiver request. However, there is no provision for automatic approval if DEQ fails to notify the requestor of rejection of the waiver request within 120 days. A permittee remains obligated to participate in e-DMR unless DEQ explicitly grants a waiver.

³ Although DEQ did not explicitly reject the second permanent waiver request, requests are not automatically approved if DEQ does not satisfy the procedural requirements of 9 VAC 25-31-1010. *See supra* note 2.

50. To date, Mr. Jones has not submitted the benchmark monitoring or Chesapeake Bay TMDL DMRs for Outfall 001 for the July-December 2018 monitoring period via e-DMR. Testimony of Heather Deihls.

E. Permit Coverage under 2019 Permit

a. Legal Requirements

51. Part II(M) of the Permit stated, "If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Board."
52. 9 VAC 25-151-60(B)(1) states, "Any owner that was authorized to discharge under the industrial stormwater general permit that became effective on July 1, 2014, and that intends to continue coverage under this general permit shall submit a complete registration statement to the board on or before May 2, 2019."
53. 9 VAC 25-31-120(B) states, "Dischargers of storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit."

b. Failure to Apply for Coverage under 2019 Permit

54. The Permit expired on June 30, 2019. Testimony of Heather Deihls; *DEQ Exh. 2*.
55. By letter dated March 18, 2019, DEQ advised Mr. Jones of the requirement to apply for coverage under the VPDES Permit for Stormwater Discharges Associated with Industrial Activity effective July 1, 2019 (the "2019 Permit") and provided a copy of the registration statement. Testimony of Heather Deihls; *DEQ Exh. 15*. DEQ's March 18, 2019 letter stated, "[t]he revised Regulation requires existing permittees to submit Registration Statements by May 2, 2019, and authorizes us to administratively continue coverage for permittees under the 2014 general permit if a *complete* Registration Statement is submitted no later than June 30, 2019." *DEQ Exh. 15*
56. Mr. Jones submitted a check dated June 24, 2019 for the permit renewal fee, which is one component of the application for permit reissuance. D #2. However, he did not submit a complete registration statement by June 30, 2019. Testimony of Heather Deihls. Therefore, the Permit was not administratively continued.
57. As of the date of the Proceeding, Mr. Jones had not submitted a complete registration statement for coverage under the 2019 Permit, and DEQ had not reissued permit coverage.

F. Calculation of Civil Penalty

58. Kristen Sadtler explained how the penalty was calculated for Mr. Jones, using the VPDES Civil Charge/Civil Penalty Worksheet (the “Worksheet”) included in DEQ’s Civil Enforcement Manual. Testimony of Kristen Sadtler; *DEQ Exh. 17*. This Worksheet is used throughout the Commonwealth to calculate civil charges and civil penalties for VPDES violations. Testimony of Kristen Sadtler; *DEQ Exh. 17*.
59. One occurrence was assessed on line 1(a)(2) of the Worksheet for failure conduct the annual comprehensive site compliance evaluation in 2016 Testimony of Kristen Sadtler; *DEQ Exh. 17*. The potential for harm was assessed as moderate because the annual comprehensive site compliance evaluation is a fundamental element of this permit and is an important check on whether pollution control measures are properly implemented and working. Testimony of Kristen Sadtler; *DEQ Exh. 17*.
60. Two occurrences were assessed on line 1(a)(3) for failure to provide quarterly visual monitoring for the third and fourth quarter of 2016. Testimony of Kristen Sadtler; *DEQ Exh. 17*. The potential for harm was assessed as marginal. Testimony of Kristen Sadtler; *DEQ Exh. 17*. Visual monitoring helps ensure pollutants are not contaminating stormwater. Testimony of Kristen Sadtler. If the visual monitoring reveals concerns with the water quality, adjustments can be made at the facility. Testimony of Kristen Sadtler.
61. Four occurrences were assessed on line 1(a)(3) for failure to submit four DMRs: the benchmark monitoring DMR for the July-December 2017 monitoring period, the benchmark monitoring DMR for the July-December 2018 monitoring period, and the benchmark monitoring and Chesapeake Bay TMDL DMRs for the January-June 2019 monitoring period. Testimony of Kristen Sadtler; *DEQ Exh. 17*. The potential for harm was ranked moderate because discharge monitoring is important for identifying whether activities at the Facility are adversely impacting water quality. Testimony of Kristen Sadtler; *DEQ Exh. 17*. If impacts are identified, the Facility can take steps to improve operating procedures and reduce the Facility’s impact. Testimony of Kristen Sadtler. It also harms the regulatory program when a permittee does not complete the monitoring required by the permit because DEQ does not have all the data it needs to make informed decisions. Testimony of Kristen Sadtler.
62. One occurrence was assessed on line 1(a)(6) for the failure to submit a registration statement for continued permit coverage at least 60 days before the June 30, 2019 expiration date of the permit, resulting in expiration of permit coverage. Testimony of Kristen Sadtler; *DEQ Exh. 17*. The potential for harm was assessed moderate because the facility failed to have permit coverage, there have been multiple compliance issues over the years, and the failure to obtain permit coverage violates a fundamental component of the program and causes harm to the regulatory program. Testimony of Kristen Sadtler.

63. One occurrence was assessed on line 1(a)(10) for failure to develop and maintain a SWPPP on site. Testimony of Kristen Sadtler; *DEQ Exh. 17*. The potential for harm was assessed as moderate because the Facility did not have a SWPPP for most of the permit term, and the SWPPP is a fundamental component of the program. Testimony of Kristen Sadtler; *DEQ Exh. 17*. Failure to evaluate the facility's operations and implement BMPs increases the risk that stormwater runoff will carry pollutants offsite.
64. One occurrence was assessed on line 1(a)(13) for failure to register for the e-DMR program and submit DMRs electronically. Testimony of Kristen Sadtler; *DEQ Exh. 17*. The potential for harm was assessed as moderate. Testimony of Kristen Sadtler; *DEQ Exh. 17*. Failure to register can have a negative effect on the regulatory program and is a regulatory requirement that helps DEQ track information and send it to other agencies. Testimony of Kristen Sadtler. Failure to submit DMRs electronically can increase the workload for agency staff and put additional strain on agency resources. Testimony of Kristen Sadtler. Additionally, the Facility has been out of compliance for a lengthy period of time. Testimony of Kristen Sadtler
65. The degree of culpability was assessed serious for the failure to register for e-DMR, failure to submit January-June 2019 DMRs, and failure to obtain permit coverage. Testimony of Kristen Sadtler; *DEQ Exh. 17*. Mr. Jones received multiple communications from the Department informing him that he was not being granted a waiver and that he needed to register for e-DMR. Testimony of Kristen Sadtler. Mr. Jones also received a reminder letter from the Department informing him of the requirement to submit a registration statement if he intended to continue coverage under the permit. Testimony of Kristen Sadtler. Although Mr. Jones does not run a sophisticated business, he has had permit coverage for several permit terms and is familiar with the reissuance process. Testimony of Kristen Sadtler.
66. The remaining violations were assessed as moderate because corrective actions have been taken and because Mr. Jones did attempt to submit the DMRs for the second monitoring period of 2018. Testimony of Kristen Sadtler; *DEQ Exh. 17*.
67. An economic benefit was calculated for the avoided cost for the missed benchmark monitoring samples. Testimony of Kristen Sadtler. The estimated cost of the sample analysis was \$100 per sampling event. Testimony of Kristen Sadtler. Since three benchmark samples were missed, the calculated economic benefit was \$300. Testimony of Kristen Sadtler.
68. The total penalty on the Worksheet was calculated as \$18,125. Testimony of Kristen Sadtler; *DEQ Exh. 12*. However, penalties in Special Orders under Va. Code § 10.1-1186 are limited to \$10,000.
69. DEQ provided Mr. Jones with numerous opportunities and extensions to file an ability to pay application. Testimony of Kristen Sadtler. Mr. Jones submitted an ability to pay application to DEQ. Testimony of Kristen Sadtler. DEQ's Office of Financial

Responsibility and Waste Programs reviewed Mr. Jones's ability to pay application; based on an analysis of Mr. and Ms. Jones's federal tax returns for 2016-2018 and other financial data, DEQ concluded that the couple is able to pay a civil charge up to \$19,700.

70. Penalties for Mr. Jones's violations have not been assessed previously in any order or case decision. Testimony of Kristen Sadtler.

71. A civil penalty of \$10,000 is appropriate to address Mr. Jones's violations in this case.

III. Conclusions of Law

1. Mr. Jones is a "person" under Va. Code § 62.1-44.3.
2. Mr. Jones failed to have a SWPPP for the Facility at the time of DEQ's January 17, 2017 inspection, in violation of Permit Part III.
3. Mr. Jones failed to conduct annual comprehensive site compliance evaluations in 2014-2016, in violation of Permit Part III(E).
4. Mr. Jones failed to conduct quarterly visual examinations in 2014-2016, in violation of Permit Part I(A)(1)(a).
5. Mr. Jones failed to submit benchmark monitoring DMRs for the January-June 2015, July-December 2017, and January-June 2019 monitoring periods, in violation of Permit Parts I(A)(1)(b), I(A)(2)(d)(2), and I(A)(5)(a).
6. Mr. Jones failed to submit Chesapeake Bay TMDL DMRs for the January-June 2016 monitoring period, and the January-June 2019 monitoring period, in violation of Permit Part I(B)(7)(b)(1), I(A)(2)(d)(2), and I(A)(5).
7. Mr. Jones failed to submit benchmark and TMDL monitoring DMRs for the July-December 2018 monitoring period via the required e-DMR forms, in violation of 9 VAC 25-31-1020.
8. Mr. Jones failed to submit an application to participate in the e-DMR program and did not obtain a waiver from DEQ, in violation of 9 VAC 25-31-970 and 9 VAC 25-31-1020.
9. Mr. Jones failed to submit a registration statement for continued Permit coverage at least 60 days before the June 30, 2019 expiration date of the Permit, and his Permit coverage expired, in violation of Permit Part II(M), 9 VAC 25-151-60(B)(1) and 9 VAC 20-31-120(B).

IV. Relief

The above findings of fact and conclusions of law support issuance of a Special Order pursuant to Va. Code § 10.1-1186 to compel Mr. Jones to comply with the State Water Control

Law, the VPDES Permit Regulations, and the VPDES General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity. Specifically, the Special Order will require that Mr. Jones:

1. Within 30 days from the date of the Special Order, submit a complete and accurate application for coverage under the VPDES General Permit for Stormwater Discharges Associated with Industrial Activity effective July 1, 2019.
2. Within 45 days from the date of the Special Order, submit an application for participation in the e-DMR program to DEQ's Piedmont Regional Office. Submit all subsequent DMRs electronically through DEQ's e-DMR program.
3. Perform Chesapeake Bay TMDL monitoring for total phosphorus and total nitrogen during the July-December 2019 or January-June 2020 monitoring period, and submit DMRs electronically using DEQ's e-DMR system by January 10, 2020 (for the July-December 2019 monitoring period) or July 10, 2020 (for the January-June 2020 monitoring period).
4. Within 90 days from the end of the monitoring period for which TMDL monitoring is submitted pursuant to paragraph 3 above, submit calculations of the Facility's stormwater loads pursuant to 9 VAC 25-151-70 Part I(B)(8) and a Chesapeake Bay TMDL action plan if required by 9 VAC 25-151-70 Part I(B)(8)(f).
5. Within 30 days from the date of the Special Order, pay a civil penalty of \$10,000.